

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

IN RE:)	CASE NO: 16-31928
)	CHAPTER 11
)	
ENERGY XXI, LTD, ET AL.,)	Houston, Texas
)	
)	Monday, November 14, 2016
Debtors.)	(4:30 p.m. to 5:26 p.m.)
)	(5:51 p.m. to 5:59 p.m.)

HEARING

BEFORE THE HONORABLE DAVID R. JONES,
UNITED STATES BANKRUPTCY JUDGE

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EXHIBIT A

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Equity Committee:

CYNTHIA SPARACINO, ESQ. (via phone)

1 Houston, Texas; Monday, November 14, 2016; 4:30 p.m.

2 (Call to Order)

3 **THE COURT:** Good afternoon, everyone. Please be
4 seated.

5 All right. The next matter on this afternoon's
6 docket is Case Number 16-3128 [sic], Energy XXI, Ltd. I'll
7 take appearances first in the courtroom, please.

8 **MR. MEYER:** Good afternoon, your Honor. David Meyer
9 of Vinson and Elkins on behalf of the debtors; joined at
10 counsel's table by Matt Moran, Harry Perrin, Jordan Leu, Reese
11 O'Connor and Jessica Peet.

12 **THE COURT:** All right. Good afternoon, folks.

13 **MS. ALFONSO:** Good afternoon, your Honor. Ana
14 Alfonso from Willkie Farr and Gallagher, counsel for Wells
15 Fargo which is the First Lien Agent.

16 **THE COURT:** Got it. Thank you. Good afternoon.

17 **MR. PATRICK:** Your Honor, William Patrick, Heller
18 Draper, for the Unsecured Creditors' Committee, along with my
19 partner, Tristan Manthey, and Adam Ravin of Latham and Watkins.

20 **THE COURT:** All right. Good afternoon, gentlemen.

21 **MR. KHALIL:** Hello, your Honor. Sam Khalil of
22 Milbank Tweed on behalf of the Ad Hoc Committee of Second Lien
23 Lenders. I'm with my partner, Andy LaBlanc.

24 **THE COURT:** All right. Thank you. Good afternoon,
25 gentlemen.

1 Mr. Rothberg?

2 **MR. ROTHBERG:** Good afternoon, your Honor. Ed
3 Rothberg and Deirdre Brown for the Official Equity Committee.

4 **THE COURT:** All right. Good afternoon.

5 Ms. Stevenson?

6 **MS. NORFLEET:** Good afternoon, your Honor. Kelli
7 Norfleet from Haynes and Boone on behalf of Exxon Mobil.

8 **THE COURT:** I'm dating myself. Thank you.

9 **MR. ANKER:** Good afternoon, your Honor. Philip
10 Anker, Wilmer Cutler Pickering Hale and Dorr, for the Ad Hoc
11 Group of EPL Noteholders and Delaware Trust as the Indenture
12 Trustee for those notes.

13 **THE COURT:** All right. Thank you, sir. Good
14 afternoon.

15 **MR. MEYERS:** Good afternoon, your Honor. Todd
16 Meyers, Kilpatrick Townsend, on behalf of Wilmington Trust as
17 the EGC Unsecured Notes Trustee.

18 **THE COURT:** All right. Thank you, sir. Good
19 afternoon.

20 **MR. DENMAN:** Good afternoon. Harrison Denman, White
21 and Case, for the Ad Hoc Group of EGC Unsecured Noteholders.

22 **THE COURT:** All right. Thank you. Good afternoon.

23 **MS. HARPER:** Good afternoon, your Honor. Ashley
24 Harper from Andrews Kurth on behalf of the Independent Director
25 of Energy XXI Gulf Coast.

1 **THE COURT:** All right. Say that again. I've got to
2 get used to that. "Harper"?

3 **MS. HARPER:** Harper.

4 **THE COURT:** Harper. All right.

5 **MS. HARPER:** Yeah.

6 **THE COURT:** That's going to take me -- it's like I
7 still called Ms. Northrup [sic] Ms. Stevenson so then that's
8 been what? Five or six years then? So that's going to take
9 some getting used to.

10 **MS. HARPER:** Me too.

11 **THE COURT:** Congratulations again.

12 **MR. RICOTTA:** Good afternoon, your Honor. Paul
13 Ricotta of Mintz Levin Cohn Ferris Glovsky and Popeo. I'm
14 counsel for Wilmington Savings Fund Society, the Indenture
15 Trustee for the Three Percent Convertible Noteholders.

16 **THE COURT:** All right. Thank you, sir. Good
17 afternoon.

18 **MR. HIGGINS:** Good afternoon, your Honor. John
19 Higgins, Aaron Power, for Jim Latimer.

20 **THE COURT:** All right. Thank you. Good afternoon.

21 **MR. MANTHEY:** Judge, I know Mr. Patrick introduced me
22 but apparently no one is hearing anything on the phone and I
23 wanted to raise that with the court.

24 **THE COURT:** Is that right? So no one can hear
25 anything?

1 **MR. MANTHEY:** No one can hear anything as of yet.

2 **THE COURT:** Ask the --

3 **MR. MANTHEY:** (indiscernible).

4 **(Pause)**

5 **THE COURT:** Ask those folks if you --

6 **MR. HILL:** Judge, this is Mark Hill with Waits Emmet
7 Popp and Teich, New Orleans. I can hear you fine on the phone.

8 **THE COURT:** All right. Well thank you.

9 **(Voices on phone overlapping)**

10 **MS. SPARACINO:** Judge, this is Cynthia Sparacino, a
11 member of the Equity Committee, and I can hear you perfectly.

12 **THE COURT:** Terrific.

13 Folks, and I -- this may be hard if they can't hear
14 anything, but to the extent that you folks are communicating by
15 text or email, perhaps we had a problem with the dial-in
16 number, perhaps you saw it earlier, we got a work-around number
17 and we've gotten the original number reactivated again. So if
18 you'd communicate, ask those folks to simply hang up, dial back
19 in on the old number,

20 **MR. SPEAKER:** Okay.

21 **THE COURT:** -- and hopefully that will correct the
22 problem. If not, let me know and I'll do the best I can. All
23 right, folks on the telephone, there are 73 callers currently
24 on the line. I'm going to activate the hand-raise feature. If
25 you wish to make an appearance, you'll need to use the star-

1 five feature on the telephone. And I can't activate the
2 feature. Oh, that's interesting. All right, evidently I'm not
3 going to activate the hands-raise feature. If you need to
4 speak, you may be talking over someone, just try and be
5 courteous. Is there anybody who wishes to make an appearance
6 that is on the telephone?

7 **MR. HILL:** Yes, Judge, Mark Hill for creditor
8 Cheramie Marine, LLC.

9 **THE COURT:** All right. Mr. Hill, let me ask you,
10 which number did you dial in on?

11 **MR. HILL:** I dialed the 1-7-1-2-7-7-0-8-0-7-1 with
12 the code 6-9-2-2-7-3.

13 **THE COURT:** Wow, that's the new number, that's the
14 work-around number, interesting. They called in on the old
15 number, on the 3100 number. All right, anyone else wish to
16 make an appearance?

17 **(No audible response)**

18 All right, well, are the news reports that are flying
19 around accurate?

20 **MR. MEYER:** I guess you always have to be careful
21 with the way to answer a question like that, make sure you know
22 the right news reports. But --

23 **THE COURT:** Right, fair enough.

24 **MR. MEYER:** Your Honor, we have great news today
25 coming out of extensive discussions that we previewed for you

1 and told you where we hoped we'd get at the last time we were
2 here on a status conference. We have global agreement among
3 all of our creditor groups. And shortly before this hearing we
4 filed an amended plan, disclosure statement supplement, plan
5 support agreement, and a scheduling motion that ties to that
6 agreement. We ran up to the wire coming in to today's hearing,
7 and we really needed every available minute to get this done.
8 This reflects a tremendous amount of hard work by all of the
9 parties and professionals, and I'd like to extend my thanks to
10 all those parties. A couple of other thank you's out of the
11 box, your Honor, just on behalf of the company, wanted to make
12 sure to thank all of the company's hardworking and loyal
13 employees for their significant contributions to the enterprise
14 throughout this case. This helped us get to today. As well as
15 thank Judge Clark again for his hard work during mediation that
16 in no question helped steer us and assist us to getting to a
17 fantastic result today. And lastly, your Honor, I'd like to
18 thank your Honor and your staff. This is an understatement
19 here to say that the negotiations are complex and these were
20 very hard-fought discussions and negotiations among all of the
21 groups, and your flexibility with hearing times and dealing
22 with our scheduling modifications, if you will, along the way
23 here has been very much appreciated, and thank you for that as
24 well.

25 Your Honor, I'll give a quick overview of some of --

1 in part the plan modifications that were reflected. At bottom,
2 it's largely a similar plan in many respects to what we
3 originally we filed with -- and that is a massive deleveraging
4 of the company's capital structure and eliminating an excess of
5 \$3 billion in funded debt. There are, of course, different
6 allocations of equity among other things that are a part of
7 this plan and at -- out of the box what we're looking at is the
8 second lien lenders -- noteholders, excuse me, receiving 84
9 percent of the equity in the reorganized company. The EGC
10 intercompany notes trust, you may recall we had a settlement
11 provision that contemplated kicking a bunch of the intercompany
12 litigation down the road. That's been eliminated from this
13 version of the plan. All of those issues are settled and the
14 independent directors each -- support each of those
15 settlements. In addition to all those intercompany issues
16 being resolved, the repurchased bonds that are held by EGC are
17 not receiving any recovery under this plan.

18 The EGC unsecured noteholders will receive 12 percent
19 of the equity under the reorganized company along with 60
20 percent of the warrant package. The EPL unsecured noteholders
21 will receive four percent of the equity along with 40 percent
22 of that warrant package. The convertible noteholders, their
23 distribution is changed into a form of cash, a \$2 million pot
24 for those folks, and the GUC distribution for general unsecured
25 creditors is increased from \$850,000 to \$1.47 million,

1 reflecting an increase from 4.3 percent to about seven and a
2 half percent on account of those claims, based on our
3 estimates.

4 Your Honor, the plan support agreement was an
5 important part of this as well, just given how complex and
6 challenging this case has been from -- under the negotiations
7 as well. The one thing I'd really flag as part of that plan
8 support agreement that I anticipate we'll be talking about with
9 you today is timing and how that's important. All the creditor
10 groups believe that emerging, the company emerging this year is
11 very important. And in line with that, the plan support
12 agreement has a milestone for confirmation hearing to commence
13 on December 15th. In addition, the first lien agent has agreed
14 to extend the use of cash collateral through the end of the
15 year to December 31st. And I'd note that while the indentured
16 trustees are not signatories to the plan support agreement,
17 they are plan support parties.

18 The one major constituency that we do not have an
19 agreement with right now, your Honor, is the Equity Committee.
20 We have continued to keep the Equity Committee in the loop on
21 all the discussions. We have shared documents with them as we
22 go here. We've shared copies of the disclosure statement and
23 the deal documents with them last week to try to help
24 facilitate their ability to comment and provide -- potentially
25 resolve issues associated with adequacy of disclosure. My

1 understanding right now from talking in the hallway with
2 Ms. Brown and Mr. Rothberg shortly before this hearing is we
3 have resolved all of their disclosure-related objections but
4 for a couple I'll highlight right now, which is first they want
5 to make sure that the management incentive plan is disclosed in
6 advance of confirmation, and we intend disclosing those
7 documents as part of the plan supplement that would be filed on
8 November 23rd. They also want to make sure that the identity
9 of the directors and officers are disclosed prior to
10 confirmation. I've confirmed and can confirm for the record as
11 well that consistent with 1129(a)(5) that's exactly what we'll
12 do.

13 And there are two additional points that are
14 disclosure-related. The first is they would like an addition
15 to the disclosure statement believing that -- stating that the
16 disclosure statement should contain additional information
17 associated with the causes of action to be released pursuant to
18 the plan. But they've also agreed that we can say that we
19 don't believe any further disclosure is necessary on this point
20 and that will resolve that concern from their standpoint. And
21 the second being the Equity Committee filed a motion this
22 afternoon, they wanted that also to be referenced in the
23 disclosure statement as well, and we're fine making that
24 modification as well. We'll be meeting with the Equity
25 Committee this week. And we do not have an agreement with this

1 time as I said.

2 And the scheduling motion, of course, needs to tee-up
3 what a confirmation process would look like to the extent that
4 we're going to be having a contested confirmation hearing. I
5 think that the one most important part of that schedule from
6 our standpoint, your Honor, is there's no need for additional
7 time here to discuss any further discovery or any additional
8 depositions that will need to be taken. There have been 46
9 depositions in this case, 20 depositions involved Debtors'
10 current and former personnel. We had ten depositions of
11 experts, three depositions each for Debtor consultants, third
12 parties, and the second lien noteholders. And with the Equity
13 Committee being the -- at this point the only major
14 constituency that's objecting to confirmation, we really view
15 this being a limited dispute revolving around valuation. The
16 plan and disclosure statement recoveries from our standpoint
17 provide a pretty clear picture that the second lien noteholders
18 are receiving recovery between 19 and 27 and a half cents on
19 their claims; the EGC unsecured noteholders between 6.9 and
20 10.7 percent; and the EPL unsecured noteholders recovering
21 approximately 8.1 to 13.4 percent on those claims. At bottom
22 we think Equity is way out of the money. And they've certainly
23 had an opportunity to participate in the many depositions that
24 have already gone on during this case associated with other
25 issues.

1 On that valuation, what we envision this looking like
2 going forward, by November 23rd as part of the scheduling order
3 we proposed we provide an updated expert report that would roll
4 forward, assuming that we have an effective date of December
5 31st. The Equity Committee thereafter will have a little over
6 a week to depose our experts and can issue a supplemental
7 report from their expert, Mr. Johnson, to the extent they elect
8 to. We think this is plenty of time. And really nothing from
9 a methodology standpoint is changing at this point. It's
10 really rolling the reserve report two months and strip
11 pricing's around the same, if not lower, based on the time the
12 last PJT report was submitted.

13 I would also add, your Honor, that the global
14 agreement between the creditors, that all came out of mediation
15 in which the Equity Committee participated in and had an active
16 role in here, so they're really -- they've been at the table on
17 that for -- and we'll see where we get on a going forward
18 basis.

19 So what are we asking for today? I realize it's a
20 little bit unorthodox. What we're hoping today, your Honor, is
21 that we can have the -- a finding from the Court that the
22 disclosure statement supplement contains adequate information.
23 We also would ask the Court to approve our scheduling order.
24 What this tees up is we have December 8th currently with you
25 already, your Honor, for a proposed confirmation hearing, and

1 we would allow them to have approximately three weeks for
2 revoting and for parties to evaluate the new plan and vote by
3 that December 2nd date. And in connection with that disclosure
4 statement, your Honor, Mr. Schiller, the company's present
5 Chief Executive Officer, is in the courtroom to the extent that
6 you would like testimony as to the adequacy and the accuracy of
7 the disclosure statement.

8 **THE COURT:** All right, let me hear from everybody
9 else and then we'll come back to that, all right?

10 **MR. MEYER:** Thank you.

11 **THE COURT:** Thank you. Anyone else wish to make
12 comments? Mr. Patrick?

13 **MR. PATRICK:** Your Honor, William Patrick for the
14 Creditors Committee. We are pleased to be here today in
15 support of the Debtors' new plan and the plan support agreement
16 on the terms stated therein. It has been a long process.
17 Where we are today I think is the direct result of a line of
18 questions that your Honor initiated on September 13 of the
19 status conference. When you asked the major parties' attorneys
20 if they thought that mediation would be helpful, you received I
21 think the appropriate responses, appointed Judge Clark, there
22 was mediation. At the start of the mediation there were no
23 viable, good lines of communications between the parties,
24 notwithstanding efforts, but Judge Clark did establish lines of
25 communication. Even after sort of the end of the face-to-face

1 mediation he -- those lines of communication remained opened
2 and allowed this case to become settled. And so we're
3 particularly pleased that everybody, all the creditors' groups,
4 have agreed to it, that the independent directors have agreed
5 to the settlement, and we on the Creditors Committee, having
6 opposed the original plan, intend to send a letter, subject to
7 approval of the disclosure statement, of course, in support of
8 this plan.

9 **THE COURT:** All right, thank you. Mr. Rothberg or
10 Mr. Anker?

11 **MR. ROTHBERG:** If you could wait for me to be last --

12 **THE COURT:** Fair enough, all right.

13 **MR. ANKER:** Good afternoon, your Honor, Philip Anker,
14 Wilmer, Cutler, Pickering, Hale, and Dorr for the EPL
15 noteholders and the indentured trustee. As Mr. Meyer said,
16 this settlement was the product of enormously long, lengthy,
17 difficult, arms' length to say the least, negotiations. It is
18 not a settlement that leaves everyone happy and thrilled, but
19 that's the way most settlements should work. I think it's fair
20 to say in the interest of full disclosure that one of the big
21 issues here is valuation, and we probably think we're getting a
22 higher recovery than the Debtor might say based on its
23 valuation because we have a more robust view of value. But
24 nevertheless, no one on our side thinks we're getting par plus
25 accrued. And given the absolute priority rule, that says

1 something about unfortunately the position of equity here. I
2 should also say the settlement reflects heavy negotiations over
3 the validity of a series of intercompany disputes, sounding and
4 preference liability, a re-characterization, equitable
5 subordination, you name the theory, we talked about it, sought
6 standing for it, posed it, and discussed it at great length,
7 and this is the product of very heavy negotiations relating
8 thereto.

9 **THE COURT:** All right, thank you.

10 **MR. ANKER:** Thank you.

11 **THE COURT:** Anyone else?

12 **MS. ALFONSO:** For the record, Ana Alfonso for the
13 first lien agent.

14 **THE COURT:** Yes, ma'am.

15 **MS. ALFONSO:** Your Honor, we were very glad to hear
16 that these creditor groups have finally reached agreement on
17 how to whack up the equity here. Wells cut its deal about six
18 months ago now, and without meaning to assign any blame or
19 throw a wet blanket on the proceedings, it did cost a lot of
20 time and expense to get where we are right now, unfortunately
21 for all of us. We were asked to extend cash collateral and we
22 have agreed that we -- well, we don't have an order today,
23 we'll get one in tomorrow. I forgot it runs out tomorrow.

24 **THE COURT:** Right.

25 **MS. ALFONSO:** But we will extend it through December

1 31st. However, I just want to caution the Court and the
2 parties that extending past December 31st would be a problem.
3 When we agreed to the first lien's treatment, there were
4 expectations regarding the liquidity that the company would
5 have on emergence and that was based on where we were
6 financially in September. We are concerned. There was a
7 minimum liquidity requirement under our proposed treatment and
8 we would just want to make sure that that doesn't get
9 jeopardized as a result of any delay. So while I do understand
10 that the Equity Committee has every right to be heard, I would
11 just urge the Court to please hold the parties to December 31
12 emergence, thank you.

13 **THE COURT:** All right, thank you. Yes, sir?

14 **MR. SPEAKER:** Your Honor, on behalf of the EGC
15 unsecured ad hoc group, we would just reiterate that there --
16 as you heard, there is a deal and our ad hoc group is
17 supportive. It's reflected in the PSA that has the support of
18 most of the bonds comprising our group, and to that point we
19 are supportive of what the Debtors are seeking today.

20 **THE COURT:** All right, thank you.

21 **MR. SPEAKER:** Thank you.

22 **MR. MEYERS:** Briefly, your Honor, Todd Meyers with
23 Kilpatrick, Townsend for the EGC notes trustee. As Mr. Meyer
24 mentioned, for various procedural reasons trustees don't
25 typically sign plan support agreements. But we have no present

1 intent to object to the deal that's on the table, and we are
2 treated as a plan support party as long as we don't solicit
3 against the plan or object. And obviously we need to continue
4 to hear from holders, but the holders that have been active in
5 the case are certainly happy with the deal and we have no
6 reason to think that it's not a good deal, so --

7 **THE COURT:** All right, got it.

8 **MR. MEYERS:** -- thank you.

9 **THE COURT:** Thank you. All right, Mr. Rothberg, I
10 think that leaves you.

11 **MR. ROTHBERG:** Thank you, your Honor. I think the
12 primary issue that I'm seeing that kind of overlays this entire
13 thing is that when we were here at the last status conference
14 and we were all talking about timing and confirmation and we
15 were talking about a global deal, okay, the global deal was
16 supposed to include the Equity. I can tell you, Judge, from
17 glancing at the papers that have been filed, every single
18 creditor constituency group has received an increase in their
19 treatment, I guess except the two L's who got -- took a little
20 bit less, and the treatment of the Equity has remained exactly
21 the same. We participated in the mediation. There has been
22 absolutely no attempt to include Equity in anything regarding
23 the case. Now, of course, the big bogey, so to speak, and what
24 everybody's pointing to is valuation and the absolute priority
25 rule. And we have our experts and they have their experts and

1 we know we'll have a trial and you'll decide the valuation.

2 But that's not the only issue.

3 We have two other primary issues that we have been
4 tasked with by the Court to deal with. One of those issues is
5 the potential for discrimination between old equity and the --
6 any officers or directors who are insiders and what they might
7 receive under a management incentive plan. Okay, that's one of
8 our specific charges to look at. And we have not -- we have a
9 -- essentially a one-paragraph description of the management
10 incentive plan. And that was going to be our objection to the
11 disclosure statement today, that they need to disclose that,
12 but Mr. Meyer has told us that they will disclose the actual
13 management incentive plan itself, a document that describes it,
14 by November 23rd; plus, in order to evaluate that and whether
15 or not those officers and directors who will be subject of the
16 management incentive plan are receiving equity either on the
17 basis of their prepetition equity or because of their future
18 work, we need to know who the officers and directors are going
19 to be. And so far we only have one name, Mr. Schiller. And I
20 just asked Mr. Meyer for clarification. He said they would be
21 disclosing the names of the officers and directors, but I'm
22 hoping he meant that by the same deadline, November 23rd, so
23 that we have an opportunity to know who we're talking about.

24 **THE COURT:** Is that going to be a problem, Mr. Meyer?

25 **MR. KHALIL:** So, your Honor, the way the plan -- Sam

1 -- for the record, Sam Khalil from Milbank and Tweed on behalf
2 of the second lien lenders. The way the plan works is there is
3 a -- the second lien holders select the board members. There's
4 a consultation right with respect to one of those board members
5 with the EGC and the EPL ad hoc groups. That selection process
6 is underway. I don't know if the selection process as well as
7 the consultation process will be completed by November 23rd.
8 It will be completed before confirmation, understanding that's
9 a requirement, but exactly when that happens I don't know.

10 **THE COURT:** But those two directors don't participate
11 in the management incentive plan, do they?

12 **MR. KHALIL:** The way the management incentive -- now,
13 I'll clarify that, and I think this should hopefully address
14 Mr. Rothberg's concern. The management incentive plan will be
15 determined by the new board. There is a requirement to
16 distribute some portion within I believe it's 120 days, but
17 that -- whether it's stock or options, all determined by the
18 new board. Who gets it, how much of it, how it's structured,
19 all determined by the new board. I think that the creditors
20 wanted to have a clean sort of separation and they structured
21 it in -- with this in mind, that we will select a new board of
22 independent parties and they will be tasked with the job of,
23 you know, creating a MIP (phonetic) and allocating an --

24 **THE COURT:** But with those two appointees, could they
25 potentially be recipients under the management incentive plan?

1 **MR. KHALIL:** The board members themselves?

2 **THE COURT:** Uh-huh.

3 **MR. KHALIL:** I don't think that the board --

4 **THE COURT:** That was my --

5 **MR. KHALIL:** The --

6 **THE COURT:** -- question and it --

7 **MR. KHALIL:** Yeah.

8 **THE COURT:** -- seems to me if we can answer that,
9 then Mr. Rothberg's complaint about those two nominees becomes
10 moot.

11 **MR. KHALIL:** Right. John Schiller is CEO, and the
12 rest of the board, they may be compensated and -- but I don't
13 expect them to participate in it but I -- again, it's the board
14 who --

15 **THE COURT:** Well, you know, Mr. Meyer, can you help
16 us with that?

17 **MR. MEYER:** Sure. Just to make sure I understand the
18 question, your Honor, the --

19 **THE COURT:** The question is, are any of the members
20 of the board of directors going to be participants other -- in
21 their capacity as directors, are they going to be participants
22 in the management incentive plan?

23 **MR. MEYER:** My expectation would be no. But right
24 now, again, all that's laid out as part of the management
25 incentive plan right now is that three percent will be

1 allocated at 120 days. Who it goes to will be a decision for
2 the new board. My expectation would be consistent with
3 Mr. Khalil's.

4 **THE COURT:** Right, but that would be unusual for
5 constituent board member appointees to actually participate in
6 that plan, wouldn't it?

7 **MR. MEYER:** In my experience, I agree with that, it
8 would be unusual because the board more likely than not's going
9 to want that to be allocated to other individuals.

10 **THE COURT:** Okay, so expect for board members that
11 are being appointed pursuant to that agreement, can we identify
12 management by the 23rd?

13 **MR. MEYER:** (No audible response)

14 **THE COURT:** Doesn't mean it can't change but I don't
15 know why the reluctance --

16 **MR. MEYER:** I think what we can say, and we'd have to
17 talk to some of the other plan support parties about this, of
18 course, particularly given the way our deals come together and
19 it's currently structured, but I do think that we would be in a
20 position more likely than not to be able to disclose to
21 Mr. Rothberg and the Court and others where we sit and where we
22 anticipate being on the 23rd. And then, of course, if it gets
23 revised, it could be amended. But I think that that would be
24 something that should be able to happen.

25 **THE COURT:** All right, that wasn't the warm fuzzy I

1 was hoping for. I don't know why that's so tough. What am I
2 missing? I mean, why is it that tough to say here's my CEO,
3 here's my vice president of this, my vice president of that,
4 with the understanding that those things could change? Does
5 the deal involve --

6 **MR. MEYER:** I'll go first and then I'll turn it to
7 Mr. Khalil, I think that we can -- his clients, of course, are
8 going to have a very important voice in that and so we'll
9 continue to work with them and --

10 **THE COURT:** Right.

11 **MR. MEYER:** -- I would like to be in a spot where we
12 can disclose all those folks.

13 **THE COURT:** But you know who they are today, right?

14 **MR. MEYER:** I sure do, yes.

15 **THE COURT:** And so you can say here is the Debtors'
16 current management, you can describe rights of input that other
17 constituents may have based upon the agreements that you've
18 been -- that you've reached, but you can say with clarity on
19 today who management is and who it's anticipated to be subject
20 to whatever other rights and inputs that you've agreed to
21 consider as part of your deal, right?

22 **MR. MEYER:** That works from my standpoint, your
23 Honor.

24 **MR. KHALIL:** I was going to say the (indiscernible)

25 **THE COURT:** Okay, thank you. All right, so,

1 Mr. Rothberg, I mean, that's probably about as much certainty
2 as you're ever going to get.

3 **MR. ROTHBERG:** Well, here's the problem, your Honor,
4 and I'm -- we're not objecting on that basis to the disclosure
5 based on the representation that --

6 **THE COURT:** Right.

7 **MR. ROTHBERG:** -- Mr. Meyer said that they're going
8 to do that.

9 **THE COURT:** Right, but you're --

10 **MR. ROTHBERG:** But --

11 **THE COURT:** -- teeing it up for your 1129 fight.

12 **MR. ROTHBERG:** Right, exactly.

13 **THE COURT:** Yeah.

14 **MR. ROTHBERG:** And so in order for us to be prepared
15 in any discovery we need to do, --

16 **THE COURT:** Right.

17 **MR. ROTHBERG:** -- we need to know who those people
18 are and with respect to -- if any of them are insiders, we have
19 to know what their proposed compensation is. That's what
20 1129(a)(5) requires.

21 **THE COURT:** Right.

22 **MR. ROTHBERG:** So if we wait until the 23rd, --

23 **THE COURT:** Okay.

24 **MR. ROTHBERG:** -- which is okay, we run -- we're
25 going to run into a problem with the scheduling to start at

1 December the 8th because --

2 **THE COURT:** Why?

3 **MR. ROTHBERG:** Well --

4 **THE COURT:** Well, let -- actually let me help you
5 there. We will not -- we are not going to run into a problem
6 on December the 8th. On December the 8th, we're going to start
7 confirmation. So you probably -- as you think through this,
8 probably need to work backwards and tell me what it is you
9 need, you know. If you need from me to order the Debtor by
10 tomorrow to tell you who their management is, subject to
11 change, I'll certainly contemplate that. But December the 8th,
12 we're going to start confirmation.

13 **MR. ROTHBERG:** Your Honor, at the last status
14 conference I think it was acknowledged by you that you couldn't
15 do December 8th without a global deal.

16 **THE COURT:** Uh-huh, well, I've changed my mind.

17 **MR. ROTHBERG:** Okay. Your Honor, the other point
18 with respect to the timing is that as you remember, there's
19 been a litigation hold, and so we have essentially stopped
20 working on discovery. And as you remember, we -- or you may
21 remember, you may not, we had a subpoena out to BDO (phonetic)
22 for documents. And how that relates to the other -- one of the
23 other charge of the committee was is, what causes of action
24 exist that are being released?

25 **THE COURT:** Okay.

1 **MR. ROTHBERG:** And we have done a substantial amount
2 of discovery on that. And with respect to the disclosure
3 statement, as Mr. Meyer indicated, we're going to agree that
4 they can put a provision in that the committee believes there
5 are causes of action that are not disclosed and that there's no
6 consideration being paid in exchange for those causes of
7 action. That's fine for the disclosure.

8 **THE COURT:** Okay.

9 **MR. ROTHBERG:** But once we get those BDO documents,
10 which I think we're supposed to start getting something this
11 week, we have to review them obviously, and obviously we may
12 have to take depositions to develop the evidence to bring to
13 the Court at the confirmation hearing about the causes of
14 action that exist that are not being released. And, your
15 Honor, I just don't see that we're -- with Thanksgiving holiday
16 in between -- and I'm going to go over some of the scheduling
17 dates in their order -- that that's really feasible.

18 **THE COURT:** Okay.

19 **MR. ROTHBERG:** And, your Honor, I would like to
20 comment on the statement about the milestones with the December
21 31 deadline. We've had in this case, your Honor, multiple
22 milestones missed. The original restructuring support
23 agreement, if I remember, had a milestone for plan to be
24 confirmed I believe in August or September. And every time
25 there was a dispute, it was pushed off so that there could be

1 negotiations. I don't -- originally, if you recall, your
2 Honor, the reason for the rush was the hurricane season. Well,
3 that's gone, the hurricane season is over. And now the reason
4 for the rush is, well, December 31st, the first lien lender
5 might not -- there might -- says there might be liquidity
6 problems. Last monthly operating report I looked at had \$300
7 million in cash on the balance sheet, plus. And there's no
8 magic to December 31st. The first lienholder, I believe after
9 they've been paid down principal on their debt, setting aside
10 the letters of credit for the P and A obligations, maybe owe
11 about \$60 million. And I think even the Debtors' valuation of
12 this company is at least ten times that, if even more, so I
13 don't see that expiration of cash collateral is really an issue
14 with December 31st. So --

15 **THE COURT:** So what is it that you're asking me to
16 do?

17 **MR. ROTHBERG:** Well, your Honor, I think the -- to be
18 fair, I think with respect to the process -- at least it was my
19 belief that if there was no global deal, you could start a
20 confirmation hearing in early January. That was kind of my
21 (indiscernible) because you've got Thanksgiving, you've got
22 Christmas in between, you've got prep work to do, and you could
23 start about that time and maybe finish by the end of January,
24 or maybe sooner, I don't know. And, of course, if they want to
25 make -- if they want to include us in a global settlement, we

1 could be done a lot quicker. But that's up to them, that's not
2 our issue. We've participated in negotiations.

3 So a couple of points, your Honor, with respect to
4 their proposed deadlines. If you look in their proposed order,
5 they have an overall discovery cutoff of December 2nd --

6 **THE COURT:** I saw that.

7 **MR. ROTHBERG:** -- but an objection to confirmation
8 deadline of November 28th. So it's -- normally you have your
9 objection to confirmation after your discovery deadline.

10 **THE COURT:** All right.

11 **MR. ROTHBERG:** So we would object to that date. We
12 also have in paragraph nine where they're talking about
13 additional depositions, limited to depositions of the Equity
14 Committee members, which that's the first time we've heard that
15 they wanted to take any depositions of Equity Committee
16 members, we have Equity Committee members all over the country
17 and so if they really did want to do that, they would -- it --
18 that would take time to organize that.

19 **THE COURT:** So let me ask you this. What deposition
20 discovery do you think that the Equity Committee needs?

21 **MR. ROTHBERG:** I think we're going to need -- well,
22 there was a deposition of the PJT valuation that was canceled
23 in view of all of the discussions --

24 **THE COURT:** Okay.

25 **MR. ROTHBERG:** -- so that will have to be taken.

1 **THE COURT:** Right.

2 **MR. ROTHBERG:** We will have to -- it really depends,
3 your Honor, on what the documents that we get from BDO tell us
4 in terms of what additional depositions we need to work on the
5 causes of action issue so --

6 **THE COURT:** So give me a range, if you can.

7 **MR. ROTHBERG:** In terms of the number of depositions?

8 **THE COURT:** Yeah. So you get documents. I don't
9 know what you're going to get from BDO. I mean, I -- I mean,
10 are you looking for evidence of payments or transfers? What is
11 it that you're looking for?

12 **MR. ROTHBERG:** Can I get Ms. Brown to address that?
13 Because she's been the one --

14 **THE COURT:** Sure.

15 **MR. ROTHBERG:** -- primarily working with that --

16 **THE COURT:** Certainly.

17 **MR. ROTHBERG:** -- issue.

18 **THE COURT:** Ms. Brown?

19 **MS. BROWN:** It deals with a variety of issues --

20 **THE COURT:** Okay.

21 **MS. BROWN:** -- including the changes in valuation
22 over time and what was reported to the auditors for valuation
23 purposes. Also, the stock purchase share agreements.

24 **THE COURT:** Right, let me start over because I asked
25 a bad question. So you've got to go depose a representative of

1 PJT, right? Who else do you anticipate needing to depose?

2 **MS. BROWN:** The BDO documents may show
3 inconsistencies which may lead to other depositions.

4 **THE COURT:** Let's assume --

5 **MS. BROWN:** So I would --

6 **THE COURT:** -- they do.

7 **MS. BROWN:** If it does, then it would be somebody
8 probably from the company who's -- has experience in that area.
9 I don't think anybody deposed the HR representative.
10 Mr. Menown didn't know any information about some of those
11 issues when he was deposed.

12 **THE COURT:** Okay.

13 **MS. BROWN:** Could be multiple people. It could be
14 the reserve director from the company. Again, he was scheduled
15 before and then was not held for the second deposition.

16 **THE COURT:** Okay.

17 **MS. BROWN:** Other than that, Mr. Schiller I guess
18 would be probably -- or it could actually be V and E counsel
19 because as I understand it, V and E counsel dealt directly with
20 auditors on the audit reports and advised or dealt directly
21 with different issues.

22 **THE COURT:** All right, that's probably going to be a
23 fairly fruitless depo so --

24 **MS. BROWN:** It could be but it --

25 **THE COURT:** -- a couple of corporate reps and PJT

1 representative, is that --

2 **MS. BROWN:** Most likely.

3 **THE COURT:** -- kind of where you see it? Now,
4 Mr. Meyer, I saw that and I raised my eyebrow when I saw it.
5 Given the schedule that you're asking for, what would be the
6 purpose in taking the depositions of the Equity Committee members?

7 **MR. MEYER:** Your Honor, I'm not sure that we will. I
8 think that of the many depositions that have occurred during
9 this case, we have not taken any depositions of the Equity
10 Committee members. I think that as I mentioned at the outset,
11 our view is there's no need for additional time and I think
12 sort of to focus on the depositions that they may need, think
13 that the facts and circumstances surrounding kind of where we
14 are, where we're going may inform do we need to do depositions
15 or not, and more than happy as I mentioned to Ms. Brown in the
16 hallway before this to work with them on any logistics. And I
17 do not anticipate we would be deposing every Equity Committee
18 member.

19 **THE COURT:** Well, walk through with me if you will,
20 give me a set of circumstances, given the remaining issues that
21 are on the table, with the understanding that you may not have
22 great clarity but at least with what you think is on the table,
23 give me one good reason why you would take an Equity Committee
24 depo other than just to beat them up a little bit.

25 **MR. MEYER:** I don't think that we would do it to beat

1 them up, your Honor. I think that as we continue to have
2 discussions with them, as I mentioned, we're having a meeting
3 this week, I --

4 **THE COURT:** Okay.

5 **MR. MEYER:** -- don't know that --

6 **THE COURT:** So --

7 **MR. MEYER:** -- we will be in that spot.

8 **THE COURT:** -- let me help you. If you really want
9 an accelerated schedule like the one you're talking about,
10 you're going to agree not to take the Equity Committee members'
11 depos absent a showing of compelling cause. Fair enough?

12 **MR. MEYER:** I'm happy to work with that, your Honor.

13 **THE COURT:** All right.

14 **MR. ROTHBERG:** Your Honor, if I could just --

15 **THE COURT:** Let me -- hold on, let me --

16 **MR. ROTHBERG:** Sure.

17 **THE COURT:** -- also ask you, further on at paragraph
18 ten there's a deadline to exchange deposition counter
19 designations. Given my proclivity regarding depos and
20 affidavits, what's the purpose of that deadline?

21 **MR. MEYER:** I'm -- hold on one second, your Honor,
22 I'd like to talk to my partner, Mr. Moran.

23 **THE COURT:** Sure.

24 **(Pause)**

25 **MR. MEYER:** And Mr. Moran's confirmed it's not our

1 plan to call people in that circumstance as counter
2 designation.

3 **THE COURT:** It's not your plan to call people by
4 designation?

5 **MR. MEYER:** Did I say that correctly?

6 **THE COURT:** So if you're going to call somebody,
7 you're not going to argue they're not available, you're going
8 to have them here if you're going to call them, correct?

9 **MR. MORAN:** Our intention, your Honor, based on your
10 prior instructions and your known preference for live testimony
11 would be to call our people live. However, if someone --

12 **THE COURT:** And perhaps the Federal Rules. I mean,
13 it's not just something I made up, right?

14 **MR. MORAN:** As well, your Honor. And we just put
15 that if somebody else had designated someone who was perhaps
16 unavailable and was able to be called, that there would be an
17 opportunity for us to counter designate (indiscernible)

18 **THE COURT:** Fair enough. But I think that if
19 somebody is not available, I think that requires a motion so
20 you know that's going to be coming, right? Okay.

21 **MR. ROTHBERG:** So -- and, your Honor, I want to point
22 out we're not trying to extend out the discovery period for a
23 lengthy, lengthy period of time and take a lot of depositions.
24 That's not our goal. We're trying to focus on what the issues
25 are that we're supposed to deal with. And so I could see, your

1 Honor, we would also -- depending on what the list of officers
2 and directors and their compensation is, and what the
3 management incentive plan is, we may have to take a deposition
4 regarding the management incentive plan. We --

5 **THE COURT:** But who are you going to be deposing? I
6 didn't ask about subjects, I asked people. You're going to be
7 taking a 30(b)(6), right?

8 **MR. ROTHBERG:** Without seeing the document you're
9 asking me to answer a question without having seen the
10 documents in advance so --

11 **THE COURT:** But the document was created by
12 management so the only person that's going to know anything
13 about it is going to be a 30(b)(6) of the Debtor, right?

14 **MR. ROTHBERG:** Right, right.

15 **THE COURT:** So it's a 30(b)(6) of the Debtor.

16 **MR. ROTHBERG:** Okay, yeah, that's -- I thought you
17 were asking me for a specific name.

18 **THE COURT:** No.

19 **MR. ROTHBERG:** So I would suggest, your Honor, that
20 we would need that, we would need one of a BDO rep.

21 **THE COURT:** For what?

22 **MR. ROTHBERG:** Well, we get their documents, we may
23 need to get -- if we need to get the documents confirmed so
24 that they're admissible, we may have to take that deposition.
25 There may be issues raised in those documents that we have to

1 ask the BDO person about, in addition to what Ms. Brown said.

2 So I'm looking at it maybe five or six at most.

3 **THE COURT:** All right.

4 **MR. ROTHBERG:** Just -- I'm just trying to give you an
5 honest -- we're not looking to go do a 25 depositions and
6 extend this thing out until the spring. We realize a lot of
7 money is being burnt in fees and we want to get this over with
8 as much as everybody else.

9 **THE COURT:** No, understood.

10 **MR. ROTHBERG:** Let's see, the other issue, your
11 Honor, I think that would be helpful for today -- I mean,
12 that's our comments with respect to the schedule. And as I
13 said, I just don't see how you -- we're being asked in
14 paragraph ten, your Honor, setting aside the counter
15 designation issue, to exchange witness and exhibit lists on the
16 day that they propose is the last day for discovery. So we're
17 going to be doing discovery and filing exhibit witness lists at
18 the same time and have objected before that. The time -- the
19 whole timeframe is backwards, if you ask me, but --

20 **THE COURT:** Ms. Staples, could you ask Mr. Alonzo to
21 come out here, please? I'm sorry.

22 **MR. ROTHBERG:** Yeah, no, that's okay, your Honor.
23 Those -- that's our comments on the scheduling order.

24 The other thing we think would be helpful, your
25 Honor, is the motion that we filed today was a motion to

1 temporarily allow a claim as a class 11 claim, which is the
2 general unsecured class. And that will impact -- if that's
3 allowed, that will greatly impact the confirmation hearings.
4 Normally, you know, with -- we filed a class proof of claim,
5 there was no objection to that claim, so normally it would be
6 allowed to vote. We wanted to bring this issue to the Court in
7 advance because we anticipate that they would just object to
8 the claim at -- you know, at a later date and then force us to
9 file a motion to temporarily allow the claim. So we think it
10 would be helpful to have a hearing on that motion in advance of
11 the confirmation hearing, and really the confirmation objection
12 deadline, so that we could, you know, properly phrase our
13 confirmation objection.

14 **THE COURT:** All right. Anything else we need to talk
15 about?

16 **MR. ROTHBERG:** No, that's it, your Honor, thank you.

17 **THE COURT:** All right. Mr. Meyer?

18 **MR. MEYER:** Your Honor, as to that last part, we
19 agree with Mr. Rothberg. We do think to the extent you have
20 availability, it would be helpful to have a hearing on his
21 motion. I do anticipate we will be objecting to that pleading
22 as he said. And I think in talking with the Creditors
23 Committee we share that view, that having a hearing based on
24 your availability would be helpful on that particular item.

25 **THE COURT:** So, Mr. Rothberg, let me ask you, let's

1 assume that the Debtor has, you know, picked something
2 reasonable, three or four days to file a response. How quickly
3 would you be available for a hearing?

4 **MR. ROTHBERG:** On that motion, I think fairly
5 quickly. Ms. Brown? So you're saying -- let me pull my
6 calendar out just so I'm working along. So if they objected by
7 Friday, for instance, next week is a bad week, it being
8 Thanksgiving, but maybe the --

9 **THE COURT:** Yeah.

10 **MR. ROTHBERG:** -- following week. I think we already
11 have a hearing set on the 29th at 9:00 o'clock on our motion to
12 certify the class proof of claim.

13 **THE COURT:** Yeah, I don't see that.

14 **MR. ROTHBERG:** No? Oh.

15 **THE COURT:** It's not on --

16 **MS. BROWN:** It was a proposed date.

17 **MR. ROTHBERG:** Oh, that was -- okay.

18 **THE COURT:** How long do you think that will take?

19 **MS. BROWN:** How long it'll take, the --

20 **THE COURT:** And I'm not going to put a stopwatch on
21 you. I'm just trying to -- I'm looking at blocks of time
22 looking for something.

23 **MS. BROWN:** Yeah, on the temporary allowance most of
24 the arguments will be legal arguments. They'll just be -- I
25 mean, unless we can stipulate to some of the facts that were

1 asserted.

2 **THE COURT:** Do you think an hour?

3 **MS. BROWN:** I'd say an hour to two hours at most.

4 You disagree with that?

5 **MR. ROTHBERG:** Yeah. No, no, I think --

6 **THE COURT:** Let me --

7 **MR. ROTHBERG:** -- if we can stipulate to facts, it
8 should be pretty easy, it should be an hour. If not, then I
9 would say two hours.

10 **THE COURT:** Let me give you options. And they aren't
11 great, but on the 28th I could start you at 9:00 o'clock. I
12 have a confirmation hearing at 10:00 in a small -- in just a
13 small manufacturing case. It shouldn't take -- you know, it
14 shouldn't take more than hour.

15 **MR. ROTHBERG:** Yeah. We -- the 28th is out for us,
16 your Honor.

17 **THE COURT:** The 28th is out for you.

18 **MR. ROTHBERG:** Yeah.

19 **(Pause)**

20 **(Judge/Mr. Alonzo confer)**

21 **MR. ROTHBERG:** Your Honor, I think we could do the
22 30th and the 1st and the 2nd, any time that you have. And if
23 you have to split it up, that's okay, too.

24 **THE COURT:** The 30th is a Corpus Christi day. The
25 1st, there's already a hearing on 1618, which is just a motion

1 for relief. Is that -- Mr. Meyer, do you anticipate that
2 taking up a significant amount of time, or do you know? It's a
3 motion for relief filed by a gentleman by Sherwin Joseph.

4 **MR. MEYER:** I do not anticipate that will take up a
5 significant amount of time.

6 **THE COURT:** Okay, so we could just set it concurrent
7 with that. There are a couple of CJ Holding matters. I have
8 no idea if they're going forward or not, but you would be
9 first, we could just start you at 2:00 o'clock and sort of look
10 at it as we go, if that works.

11 **MR. ROTHBERG:** Yeah, I think that works, your Honor.
12 I think -- but obviously that kind of keys into the
13 confirmation objection deadline being the -- in the order as
14 the 28th because the whole --

15 **THE COURT:** No, but I'm going to --

16 **MR. ROTHBERG:** You're going to change --

17 **THE COURT:** I'm going to deal with that.

18 **MR. ROTHBERG:** Okay.

19 **THE COURT:** All right, so we all agree that we set --
20 now I lost the motion number.

21 **MR. ROTHBERG:** And did you say 2:00 o'clock, your
22 Honor?

23 **THE COURT:** That is when the current setting is, yes.

24 **MR. ROTHBERG:** Okay, because I see I have a
25 disclosure statement hearing with Judge Isgur which will not

1 last 15 minutes, I wouldn't think.

2 **THE COURT:** At 2:00 o'clock as well?

3 **MR. ROTHBERG:** At 2:00 o'clock on the same.

4 **THE COURT:** I'm perfectly happy to set you at 2:30 --

5 **MR. ROTHBERG:** Yeah.

6 **THE COURT:** -- with the understanding that if the CJ
7 Holding folks who are going to go at 2:00, if they go past
8 2:30, you're just going to wait.

9 **MR. ROTHBERG:** Yeah, that's fine, your Honor.

10 **THE COURT:** Okay, then we'll set the amended motion
11 for expedited consideration motion of the official committee of
12 equity security holders to temporarily allow class proof of
13 claim for voting purposes at Docket Number 1639 for hearing on
14 December the 1st, 2016, at 2:30. Does that work?

15 **MR. ROTHBERG:** Yes, your Honor.

16 **THE COURT:** Mr. Meyer, you okay with that?

17 **MR. MEYER:** I am, your Honor.

18 **MR. ROTHBERG:** Do you want to set for them a
19 deadline --

20 **THE COURT:** I'm going to.

21 **MR. ROTHBERG:** -- to respond? Yeah, okay.

22 **THE COURT:** Yeah, if we're going to set a hearing for
23 the 1st, Mr. Meyer, my thoughts about an answer date would be
24 close of business on the 28th. That hopefully won't interfere
25 too much with Thanksgiving holiday.

1 **MR. MEYER:** We're happy to do that, your Honor, that
2 works for us.

3 **THE COURT:** All right, so we'll look for responses by
4 5:00 o'clock Central Time on the 28th; does that work?

5 **MR. ROTHBERG:** That works, your Honor.

6 **THE COURT:** All right. So let's talk about -- and if
7 I'm undoing something that's been negotiated in the agreement
8 that I haven't seen or had a chance to read through, I want
9 somebody to tell me. Currently have -- here is what I am
10 inclined to do. I am inclined to -- I will move my Victoria
11 docket on December the 13th, start you at 9:00 o'clock. You
12 will have the entire day. And what my suggestion would be is
13 to give you that day for commencing confirmation. I would set
14 the objection deadline for December the 9th. And I understand
15 that that forces folks to work over the weekend, but you're
16 kind of asking for this so I think that's going to be -- I
17 think that's an acceptable amount of pain to bear, is to give
18 you those two dates, step down for a couple of minutes and let
19 you work backwards with respect to the other deadlines. I will
20 tell you again, if we're going to do this, I want it agreed,
21 absent a motion setting forth compelling cause, no depositions of the
22 Equity Committee members. I'm also looking at the deposition
23 schedule and thinking about what Mr. Rothberg and Ms. Brown
24 have said. I am thinking about limiting the discovery, absent
25 an emergency motion, to a -- what I'm going to call a PJT depo

1 and no more than two Debtor 30(b)(6) depos. I haven't really
2 heard a good reason why anything more than that is needed.
3 Mr. Rothberg, it certainly gives you the right to come back and
4 say, when you said that, --

5 **MR. ROTHBERG:** Right.

6 **THE COURT:** -- you couldn't possibly have been
7 thinking about A, B, and C, and I will certainly take that up
8 on an emergency basis, if that comes up.

9 **MR. ROTHBERG:** Yeah, no, no, no, that's fine, your
10 Honor. I think we need to see what they're producing and then
11 if the two isn't enough, we'll come back and ask for another
12 one.

13 **THE COURT:** Got it.

14 **MR. ROTHBERG:** Your -- can I ask, is the -- a
15 question in terms of if it's not finished that week, what
16 you're doing with the holiday weeks? Because --

17 **THE COURT:** I -- honestly, Mr. Rothberg, I don't
18 know.

19 **MR. ROTHBERG:** Okay.

20 **THE COURT:** Because I will tell you CJ Holding starts
21 later in the week so I -- and I don't know where that's going.
22 I -- you know, there are things going on outside the courtroom
23 that I don't yet fully appreciate. So I've got blocks of time
24 reserved for different things, and as we sit here today, I
25 don't have the foggiest notion if all of them or none of them

1 are going to proceed. The only thing I can give you today that
2 I know with certainty is I can give you -- if I move the
3 Victoria docket, I can give you all day on the 13th, so that
4 ought to be a good starting point. And if it's -- if the
5 issues really come down to valuation, I can't imagine that
6 takes a day. If it's valuation and the management incentive
7 plan, again, I don't know where that's going but, again, I
8 don't think that's too terribly complex. If it gets beyond
9 that, yeah, then I may be surprised.

10 **MR. ROTHBERG:** Well, we are going to have ample
11 evidence on causes of action that are not disclosed and that
12 are being released under the plan, so we anticipate having
13 witnesses and exhibits on those issues.

14 **THE COURT:** No --

15 **(Loud screech from speakerphone; pause)**

16 Finally, I got that back. All right, sorry about
17 that, folks. All right -- again, and I'm not trying to limit
18 you, Mr. Rothberg. I just -- you know, I honestly don't
19 know --

20 **MR. ROTHBERG:** No, no, I --

21 **THE COURT:** -- how to answer the question. I can
22 give you all day that day, we'll go as far as we can, and then
23 we'll reassess when we get to the end of the day. I mean, if
24 Mr. Meyers (sic) plays super lawyer and he puts on his case in
25 20 minutes and then turns it over to you, then you've got --

1 you know, you've got a fairly long day. If he takes all day
2 long to present his case in chief, then I understand I'm going
3 to have to start looking for other days.

4 **MR. ROTHBERG:** Yeah. I mean, that's -- and that's
5 fine if he wants to take 20 minutes. I think we will finish it
6 that week. But -- and just in fairness of disclosure, I'm out
7 the following two weeks after that.

8 **THE COURT:** Yeah, but you've got an ample substitute.

9 **MR. ROTHBERG:** I do have a good substitute.

10 **THE COURT:** Yeah, all right.

11 **MR. ROTHBERG:** Thank you.

12 **THE COURT:** Not that Ms. Brown is a substitute.
13 Maybe it's the other way around. I didn't intend anything by
14 that.

15 **MS. BROWN:** You redeemed yourself.

16 **THE COURT:** Thank you. All right, Mr. Meyer?

17 **MR. MEYER:** Your Honor, just one point in response to
18 Mr. Rothberg that I wanted to make sure was very clear is that
19 the Equity Holders are not giving any release as part of this
20 plan. The plan is very, very clear on that front.

21 **THE COURT:** Yeah. I -- this, again, I'm -- all I'm
22 doing today is scheduling. I'm trying to balance. I am driven
23 in large part by Wells' good citizenship, if you will, but
24 always politely reminding me that I'm taking too long, which
25 she does exquisitely. I mean, she gets up and she smiles at me

1 and she tells me something funny and she gives me a new legal
2 term that I've never heard of before, and then she politely
3 says and, judge, you're taking too long, it's our money. I
4 hear that. So I'm doing the best I can juggling dates. If I
5 give you -- if I -- having given you those two dates with the
6 conditions that I have given you, do you think that you can
7 agree to a scheduling order or at least narrow the disputes?
8 And then I'm perfectly happy to pick days if you can't.

9 **MR. MEYER:** I think that we can and appreciate your
10 continued flexibility on all those points, your Honor.

11 **THE COURT:** Sure. Think we can do that in say maybe
12 the next 15 minutes or so?

13 **MR. MEYER:** I would hope so.

14 **THE COURT:** Okay. Mr. Rothberg?

15 **MR. ROTHBERG:** Yeah. Just, your Honor, if it's okay
16 if I can be excused and leave Ms. Brown, my able trial lawyer,
17 to deal with the rest of the issues?

18 **THE COURT:** All fine, thank you.

19 **MR. ROTHBERG:** Thank you.

20 **THE COURT:** All right, anyone else need to make a
21 comment before we take a break?

22 **(No audible response)**

23 All right. Then, if you would, Ms. Staples will turn
24 off the microphones back into chambers so you can have a
25 conversation in the courtroom. Folks on the telephone

1 obviously will be able to hear but chambers will not. If you'd
2 just let Ms. Staples know when you're ready, then I'll be back
3 out, all right?

4 **MR. MEYER:** Thank you, your Honor.

5 **THE COURT:** All right, thank you, we'll be adjourned.

6 **THE CLERK:** All rise.

7 **(Recess taken from 5:26 p.m. to 5:51 p.m.)**

8 **THE COURT:** All right, thank you, everyone, please be
9 seated. Mr. Meyer gave up?

10 **MR. MORAN:** Temporarily I think, your Honor.

11 **THE COURT:** Just joking, all right.

12 **MR. MORAN:** For the record, Matt Moran with Vinson
13 and Elkins for the Debtors. Your Honor, I think we've worked
14 out all the dates and have agreed with the Equity Committee for
15 a schedule that works based on the dates that your Honor gave
16 us, just with two things that I wanted to call to the attention
17 of the Court.

18 **THE COURT:** Sure.

19 **MR. MORAN:** On the deposition front we have in
20 addition to the depositions that we discussed earlier,
21 consistent with what we have in the order, to the extent the
22 Equity Committee supplements an expert report we have agreed
23 that we could take their expert's deposition.

24 **THE COURT:** Of course I never intended to limit that.
25 I just didn't see the -- you know, I just didn't see the need

1 for depositing the Equity Committee members.

2 **MR. MORAN:** Understood, your Honor. And then the
3 only other issue to flag for your Honor is that on December 1
4 at 2:30, in addition to hearing Docket Number 1549, we would
5 ask that we also hear Docket 1637 that was filed this
6 afternoon, which is the temporary allowance motion that would
7 relate to Docket 1549. I think --

8 **MS. BROWN:** Just for clarity, 1549 was originally set
9 to be heard with confirmation. That's the motion for the
10 allowance of the claim as a class claim; and then 1637 is the
11 motion for temporary allowance of the claim at a certain
12 amount --

13 **THE COURT:** Do you want to have them heard together?

14 **MS. BROWN:** I think they can be heard together.

15 **THE COURT:** Okay, that's fine by me.

16 **MR. MORAN:** Okay.

17 **MS. BROWN:** And with the stipulation that we do
18 understand that the evidence requirements are going to be
19 higher with the class claim motion --

20 **THE COURT:** Right.

21 **MS. BROWN:** -- and may take more time and may --

22 **THE COURT:** That's why I was asking.

23 **MS. BROWN:** Okay. And so I'm glad you asked.

24 **THE COURT:** Okay.

25 **MS. BROWN:** And that's why -- we did discuss that it

1 may have to -- it may not conclude on December 1st because of
2 that, but the effort is to work on stipulation of facts because
3 the Debtors, at least as to the Equity holders' interest,
4 wouldn't be disagreeing as to those facts. And I well know the
5 Court's lack of preference for affidavits, so we would have
6 intended to have Equity Committee members and testimony to
7 support that class claim at confirmation.

8 **THE COURT:** I'll leave it up to you all. You've got
9 the time. I do not have time on Friday. I agreed to mediate a
10 case for one of the big dogs upstairs so my guess is I should
11 show up for that. So you've got the time on the 1st, and if
12 you --

13 **MR. MORAN:** Okay, we'll try.

14 **THE COURT:** -- need additional time, I mean, it's
15 going to be the following week some time.

16 **MR. MEYER:** That's fine, your Honor.

17 **THE COURT:** That's fine? Okay, then we'll set both
18 matters on the 1st.

19 **MR. MORAN:** Thank you, your Honor.

20 **THE COURT:** All right. And how do you intend on --
21 are you going to upload a scheduling order, what are you
22 proposing to do?

23 **MR. MORAN:** We would intend to revise this order,
24 circulate it to everyone, get their sign-off, and then upload
25 an agreed order tomorrow probably.

1 **THE COURT:** Fair enough. As always, if you would let
2 Mr. Alonzo know the moment it's been uploaded, that way I can
3 reach out and grab it. If you have problems, somebody rethinks
4 this or there's simply a misunderstanding as to what the dates
5 are, I want you to contact Mr. Alonzo tomorrow because I simply
6 want to get this issue resolved so everybody can move forward,
7 all right?

8 **MR. MORAN:** Absolutely.

9 **THE COURT:** All right.

10 **MR. MORAN:** Thank you, your Honor.

11 **THE COURT:** Thank you. Anything else we need to
12 address, Mr. Meyer?

13 **MR. MEYER:** Your Honor, briefly I think just a
14 similar point that I mentioned a couple of the disclosure-
15 related items that I've talked about with Mr. Rothberg and
16 Ms. Brown. I would envision a similar process on the
17 disclosure statement supplement but we will -- I'll work with
18 Ms. Brown to address the points that I highlighted on the
19 record and we would submit that similarly tomorrow for
20 approval.

21 **THE COURT:** I am perfectly happy to do that with this
22 one caveat. Since it was filed today, and I didn't have an
23 opportunity to read it until I took a break, is I don't mind
24 going ahead and approving it by agreement with the
25 understanding that it is -- what I'd like to do is just give it

1 conditional approval and then just take it up at the beginning
2 of confirmation. If anyone else, you know, gets it today and
3 has a problem with it, wants to raise an issue, I simply -- I
4 think that's appropriate. Do you have any problem with
5 proceeding that way?

6 **MR. MEYER:** I think we're going to get there with
7 Ms. Brown on her comments and so I'm fine with that approach,
8 your Honor.

9 **THE COURT:** Ms. Brown, it actually gives you all the
10 way to confirmation essentially to continue to deal with the
11 issues. Do you have any issue with doing it as a conditional
12 approval by agreement subject to raising objections at
13 confirmation, if you think they still exist? Debtors' taking
14 the risk. I don't see the downside for you.

15 **MS. BROWN:** No, but the issue with respect to having
16 the two motions heard together on the 1st, --

17 **THE COURT:** Yes?

18 **MS. BROWN:** -- it's going to affect all the other
19 deadlines then if we don't conclude on the 1st. So what I
20 would suggest is that we -- I might need to revisit with the
21 Debtors on that.

22 **THE COURT:** Fair enough. I don't know why you'd do
23 them both together. I just genuinely don't. I didn't raise it
24 just for the sake of raising it, but --

25 **MS. BROWN:** Yeah.

1 **THE COURT:** -- if that's what you all want to do,
2 I'll do my best but --

3 **MS. BROWN:** I was trying to be compromising, which
4 isn't normally my trait, --

5 **THE COURT:** True, which you shouldn't get outside
6 your box.

7 **MS. BROWN:** -- however, because of the way the
8 deadlines will work out, I don't think it's going to work with
9 having them set together.

10 **THE COURT:** I'll --

11 **MS. BROWN:** I think we have to (indiscernible)

12 **THE COURT:** I'll leave that up to you all. If you
13 think you can get it done, then I'm perfectly happy to try. If
14 you decide that perhaps we ought to just do the estimation
15 motion, leave the other for confirmation or some other time,
16 then I am perfectly happy to do that. If you would just simply
17 in a joint communication let Mr. Alonzo know that you've
18 changed your mind, we'll make a docket entry if you all change
19 your mind, so that everybody will get notice of the change;
20 does that make sense?

21 **MR. MEYER:** We're happy to do that, your Honor.

22 **THE COURT:** All right.

23 **MS. BROWN:** And that's all I can agree to at this
24 point so --

25 **THE COURT:** Fair enough. But are you okay with

1 simply doing a conditional approval --

2 **MS. BROWN:** Yes, I have no issue with that.

3 **THE COURT:** -- by agreement, subject to raising the
4 issue at confirmation?

5 **MS. BROWN:** Yes, your Honor.

6 **THE COURT:** All right. And did Ms. Harper leave, did
7 I lose her? There you are. As I understand it, you had your
8 motion to extend the scope of the employment arrangement. It
9 seemed to me to be pretty straightforward, you just got more
10 than you thought you were getting and now you want to be
11 included in the interim comp order as well. Did I read that
12 correctly?

13 **MS. HARPER:** Right. Our client's role has expanded
14 during these cases.

15 **THE COURT:** Don't disagree. It makes sense to me. I
16 didn't see any objections. Anyone wish to raise an issue?

17 **(No audible response)**

18 All right, I will sign the order when I step down,
19 all right?

20 **MS. HARPER:** Thank you, your Honor.

21 **THE COURT:** Anything else, anybody?

22 **(No audible response)**

23 All right, thank you, everyone, we'll be adjourned.

24 **(This proceeding was adjourned at 5:59 p.m.)**

25

CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

A handwritten signature in cursive script, appearing to read "Toni Hudson", is positioned above a horizontal line.

November 15, 2016

TONI HUDSON, TRANSCRIBER